IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 613 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUNVANTSINH NATVARSINH RANA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 613 of 1998

MR HARIN P RAVAL for Petitioner No. 1

MR PR ABICHANDANI, APP, for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 11/09/2002

ORAL JUDGEMENT

1. This Criminal Revision Application arises out of a judgment and order rendered by the learned Sessions Judge, Panchmahals, at Godhra, in Criminal Appeal No.17 of 1992, on September 29, 1998. The said appeal arose

out of a judgment and order of learned Assistant Sessions Judge, Panchmahals, at Godhra, in Sessions Case No.192 of 1991 dated July 9, 1992.

2. The facts of the case, in brief, are that the revisioner was accused of having kidnapped minor-Sumitra from the lawful custody of her father. According to the prosecution, the incident occurred at village Bahi, Taluka Shehera. One Kanaksinh Ravesinh Solanki of village Bahi has Sumitra as one of his children, who, according to the prosecution, was a minor. As per the prosecution case, the revisioner induced her and kidnapped her from the lawful custody of the complainant on the 19th January, 1991, with the intent of compelling her to marry him against her will. A First Information Report was lodged with Shehera Police on the 25th January, 1991 and offence was registered. The police investigated the offence and, ultimately, having found sufficient evidence, filed charge sheet before the learned Judicial Magistrate, First Class, at Lunawada. Learned Judicial Magistrate, First Class committed the case to the Court of Sessions, as the offences alleged were triable exclusively by a Court of Sessions. Sessions Case No.192 of 1991 thus came to be registered. Learned Assistant Sessions Judge framed charge against the accused-revisioner at Ex.2 for the offences punishable under Sections 363 and 366 of Indian Penal Code. The accused pleaded not guilty to the charge and claimed to be tried. The prosecution led the evidence and considering the evidence of the prosecution, the learned Assistant Sessions Judge came to a conclusion that the prosecution could successfully prove the charges levelled against the accused and, therefore, convicted the accused-revisioner for the offences punishable under Sections 363 and 366 of Indian Penal Code and sentenced him to undergo simple imprisonment for a period of two years and four years with a fine of Rs.200/- and Rs.300/-, respectively, for the said offences and, in default in payment of fine, it was ordered that the convict shall undergo further imprisonment for a period of 15 and 20 days, respectively.

3. The said judgment and order was challenged before the learned Sessions Judge, Panchmahals, at Godhra, in Criminal Appeal No.17 of 1992. The learned Sessions Judge partly allowed the appeal. He confirmed the conviction under Section 363 of Indian Penal Code and reduced the sentence of imprisonment to one year while maintaining the sentence of fine. The learned Sessions Judge, however, set aside the conviction under Section 366 of Indian Penal Code and acquitted him of the said

charge.

4. Aggrieved by the said judgment and order of the learned Sessions Judge, present revision application is preferred.

5. Record and proceedings are before this Court. Learned Advocate Mr. Raval submitted that the ingredients of the offence o kidnapping as envisaged under Section 361 of Indian Penal Code are not present in the case. This aspect has been overlooked by the Courts below while recording and confirming the conviction. Mr. Raval has taken this Court through the entire record and proceedings, particularly, deposition of the prosecutrix-Sumitra, at Ex.15. He has also taken this Court through the deposition of the Investigating Officer. Mr. Raval submitted that, if these two depositions are read together, it is clear that the girl left the house of her father voluntarily without any inducement. He also submitted that even after reaching the house of the revisioner, it was she who induced the revisioner to leave with her and, therefore, the basic ingredients having not been satisfied, the conviction could not have been recorded nor could it have been confirmed. Mr. Raval submitted that the whole episode is the outcome of a teenage love affair opposed to by the family members of the girl. Mr. Raval submitted that even the F.I.R. is belated. Under the circumstances, he submitted that this revision may be allowed.

6. Having regard to the evidence on record, in light of the conentions raised before this Court, it would be appropriate, if the deposition of the prosecutrix-Sumitra (Ex.15) is considered because, as observed by the Courts below and rightly so, the deposition of the prosecutrix would be the only material evidence which can throw light on either the guilt or innocence of the accused-revisioner. It transpires from her deposition that, in the examination-in-chief, she comes out with a story which is an improved and changed version with a total go by to her original version as given to the police. These improvements and contradictions are brought on record by the defence during her cross-examination and deposition of the Investigating Officer-Rameshchandra Keshavlal (Ex.21).

7. Sumitra (Ex.15) states that on the 19th January, 1991, no incident had occurred. She says that she knew the accused and he used to meet her. He used to tell her to marry him. On the 19th January, 1991, the accused told her in the afternoon to come to his house and,

therefore, she went along with him. The accused had threatened her that, if she does not go with him, he would kill her as well as her father. Therefore, she went. She says that the accused took her to his uncle's place at Baroda in a tempo. From the house of the accused, they went to Godhra on his friend-Rajendrasinh's motorcycle. From there, they went to Baroda and came back to Godhra by night and went to the house of the brother-in-law of the accused, who stays in the police lines and stayed there from 2-3 days. She says that when she told the accused that she wants to go to her father's house, he again intimidated her. Then her father came to the police lines and a 'Panch' of about 25 persons was gathered. At that time, she did not go with the father, but asked for going to Nari Samrakshan Gruh. According to her, she did so because she felt that if she would go with her father, the accused would kill her father and if she does not, there may be a quarrel. She stayed at Nari Samrakshan Gruh for five months and, thereafter, she went to her maternal uncle's house. There also, the accused with 4-5 associates had come to take her away and had threatened her. She says that the accused had taken away her with an intention to marry her. During cross-examination, she admits to have stated before the police that she used to frequently go to the house of the accused as his sister-Vasuben was her friend. She admits to have stated that she was acquainted with Gunvantsinh for about a year and had developed an affection, which culminated into a love affair between the two. She states further that they used to meet in isolation and her parents having come to know about this, scolded her. She, however, denies to have stated before the police that she had decided to marry accused-Gunvantsinh. She also denies that her family members were aware about the love affair for about five months prior to the incident.

7.1 She admits that she has stated before the police that about 1 o' clock, she started for going to the house of Gunvantsinh by informing her aunt Gita that she was going to the house of her friend-Jairaj and that she was talking to Gunvantsinh. She admits to have stated that her uncle-Mahendrasinh saw both of them talking to each other. She also admits that Mahendrasinh did not like her meeting the accused. She, however, denies that she was scolded by him in this regard. She admits that her uncle had only asked her as to why she had gone. She denies to have stated before the police that she felt that she would be killed and, therefore, she went to the house of Gunvantsinh and told him that she had been heavily scolded by Mahendrasinh and had been threatened to be killed and, therefore, if he wants to save her,

they should abscond and, therefore, Gunvantsinh agreed to go with her.

8. If the deposition of the Investigating Officer-Rameshchandra Keshavlal (Ex.21) is seen, during cross-examination, he admits that Sumitra had stated before him in her statement that, she was in love with Gunvantsinh and, therefore, she had firmly decided to marry him and had promised Gunvantsinh to marry him. He states that, she had also stated that, having learnt about the relationship, her parents and uncles were insisting her for not going to Gunvantsinh's house and were scolding her therefor. He says that Mahendrasinh had seen her and accused talking and, therefore, when she reached home, Mahendrasinh scolded her and threatened her to be killed. She was, therefore, frightened. She, therefore, went to the house of Gunvantsinh and told him that Mahendrasinh had heavily scolded her and had threatened her to be killed. She, therefore told him that, if he wants to save her, they should elope and he, therefore, agreed to go with her.

9. With the above evidence on record, what becomes very clear is that, though the prosecutrix has stated in her deposition about the accused having threatened her and under the threat, she having gone to his house and her being taken out to Baroda, the entire version is a concoction and a total go by to her original version emerging from her statement before the Police. On the contrary, what appears is that the prosecutrix was in deep love with the accused-revisioner and, on the date of the incident, when they were noticed by her uncle-Mahendrasinh, he threatened her of her life. She, therefore, went to the house of the revisioner and persuaded him to elope. The basic requirement of Section 363 of taking or enticing away the minor from the lawful custody of the guardian cannot be said to have been established because the prosecutrix, on being scolded and threatened by her uncle-Mahendrasinh, leaves the house voluntarily, when the revisioner is nowhere in picture. Thereafter also, when she reaches the house of the revisioner, it is not the revisioner who even suggested for elopement. It is her suggestion for elopement, to which the revisioner agrees and, therefore, with these pieces of evidence, it cannot be said that the offence of kidnapping was constituted. The conviction, therefore, could not have been recorded nor could it have been confirmed by the Courts below. Considering the background in which the incident occurred and considering the material on record, the revision deserves to be accepted and the same is accepted. The judgments and

orders impugned herein are set aside. The revisioner is acquitted of the charge for which he is convicted. The bail bond shall stand cancelled. Fine, if paid, will be refunded to him. Rule is made absolute.

[A.L. DAVE, J.]

gt